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ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

September 29, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Pai:

As a follow-up to our August 14, 2017 letter, we write again to request that you provide answers to questions that have yet to be answered regarding Sinclair Broadcast Group (Sinclair). We intended our letter last month to serve as an opportunity for you to address the allegations that you and your staff provide preferential treatment to Sinclair. We received your September 8, 2017 letter, and we appreciate the efforts of Commission staff to collect the information included in your response, but the narrative you provided failed to respond to several of our specific questions and raised additional questions.

Your failure to provide the requested correspondence between your office and Sinclair representatives is most troubling. In your response to our letter, you note that “[c]orrespondence between me or members of my office and representatives of Sinclair have been the subject of multiple FOIA requests,” and that you are “sending such correspondence that has been produced to date in response to those FOIA requests.”¹ This is not fully responsive to the original request.

The Freedom of Information Act (FOIA) is specific in its instruction that FOIA is not to be used as authority to withhold information from Congress.² FOIA cannot be used as an excuse to limit or fail to provide the requested documents, nor does it preclude you from sending Congressional committees of jurisdiction information beyond what FOIA requires. We reiterate our request that you provide *all* correspondence between you or members of your office and representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, regardless of whether it is subject to a FOIA request.

¹ Letter from Ajit V. Pai, Chairman, FCC, to Rep. Frank Pallone, Ranking Member, House Committee on Energy and Commerce (Sept. 15, 2017).

² See 5 U.S.C. §552(d).

We continue to have concerns regarding the timing of (1) the reinstatement of the UHF discount rule, and (2) the review of the proposed merger between Sinclair and Tribune Media Company (Tribune). In your response to us, you claim that neither Sinclair nor Tribune informed you of a possible transaction prior to the FCC voting to reinstate the UHF discount rule, but news reports were already circulating in early March 2017 of a possible merger.³ The fact that the Commission released a draft UHF discount reinstatement order at the end of March for consideration at the April Commission Open Meeting continues to raise questions about whether the reinstatement of the UHF discount rule and the merger announcement were merely coincidental.

You also claim in your response letter to us that the initial comment periods for the proposed Sinclair-Tribune merger were adequate to provide the public with an opportunity to review and comment on the proposed transaction. Yet the day before you responded to our letter, the FCC released an information request to the applicants seeking additional details. It is concerning that it took the FCC so long – approximately 70 days into its review – to request basic information such as, but not limited to: (1) Sinclair's current national audience reach, (2) steps taken or planned to comply with the national ownership limit or the local television ownership rule, and (3) a complete list of all sharing agreements or options in which either applicant is a party in the DMAs where Tribune stations are located.⁴ Interested parties requested similar information nearly two months earlier when they filed a motion for information and an extension of time.⁵ A request that the FCC has never acted on.

³ See, e.g., Jessica Toonkel, Liana B. Baker, *Exclusive: Sinclair approaches Tribune Media about possible deal – sources*, Reuters (March 1, 2017) (<http://www.reuters.com/article/us-tribunemedia-m-a-sinclairbroadcast/exclusive-sinclair-approaches-tribune-media-about-possible-deal-sources-idUSKBN16843R?il=0>).

⁴ Letter to Mr. Miles S. Mason and Mr. Mace J. Rosenstein from Michelle M Carey, Chief, Media Bureau, *Re: Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc.*, MB Docket no. 17-179 (Sept. 14, 2017).

⁵ Motion of Dish Network, American Cable Association, and Public Knowledge for Additional Information and Documents and Extension of Time, *In the Matter of Application of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179 (Jul. 12, 2017).

We ask that you respond to the attached list of questions by October 12. If you choose to respond in narrative form instead of providing specific responses to the individual questions, please note within your narrative the question that you are addressing.

Sincerely,



Frank Pallone, Jr.
Ranking Member



Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology



Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations

Enclosure

ATTACHMENT

Correspondence:

1. Please provide all correspondence between you or members of your office and representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016. [*Second Request*]
2. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using a non-government email account? If so, please provide this correspondence. [*Second Request*]
3. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using social media messaging services or other messaging applications, such as, but not limited to, Facebook Messenger? If so, please provide this correspondence.
4. Please provide a copy of every FOIA request, both completed and pending, that relate specifically to Sinclair.

Sinclair-Tribune Proposed Merger:

1. When did you or your staff become aware of a possible transaction between Sinclair and Tribune?
2. When did you direct the Media Bureau to begin drafting an order to reinstate the UHF discount?
3. When did the Media Bureau begin to draft the September 14 Information Request letter to the applicants?
4. Will the Media Bureau seek the additional information requested by interested parties in the July 12, 2017 Motion for Additional information and Documents and Extension of Time?
5. Will the Media Bureau pause the informal 180-day clock, as it has done in previous merger reviews,¹ once the applicants respond to the information request in order for interested parties to have time to review and respond to the new information?

¹ The Commission has paused the 180-day informal clock in at least seven prior media-related merger reviews going back to 2003. We note that there was no pause in the clock for the Nexstar/Media General merger even though there was an information request. But that appears to be the exception, and likely is off-set by the fact the total time for that review was 329 days.

Processing Guidance on License Transfer Applications:

1. Will you start a process for the full Commission's consideration on how the Media Bureau should review license transfer applications with sharing agreements or financial agreements? Specifically, what is your plan to ensure that the Media Bureau has specific procedures to fully evaluate the impact of such transactions on the local markets and consumers? If you do not plan to put these specific procedures in place, please explain your reasons for not doing so. [*Second Request*]

Other Potential Proceedings:

1. Please provide a specific time frame for the Commission's consideration of revisions to the current TV Joint Sales Agreement attribution rule.
2. Please provide a specific time frame for the Commission's consideration of revisions to the current local TV ownership ("duopoly") rule.
3. Please provide a specific time frame for the Commission's consideration of revisions to the current national TV ownership cap.
4. Please provide a specific time frame for the Commission to start the next Quadrennial Review of Broadcast Ownership rules.



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

December 21, 2017

The Honorable Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman DeGette:

Thank you for your letter dated September 29, 2017. As I explained in my September 8 response to your previous letter, since joining the Federal Communications Commission in 2012, my actions to promote a vibrant and free over-the-air broadcast service have been motivated by my belief that a strong over-the-air broadcast service advances the public interest, not by a desire to help any particular company.

I provide below specific responses to your additional questions. Particularly, with respect to the UHF discount, the responses below make clear that the Commission's decision this year to reverse the prior Commission's party-line decision and reinstate the UHF discount pending a holistic review of the national ownership cap was consistent with my prior actions and statements on this issue dating back four years and was made well before I was aware of the pending transaction between Sinclair and Tribune.

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2. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using a non-government email account? If so, please provide this correspondence.

Response: I have surveyed my staff, and we have only located one such e-mail, which was from Jerry Fritz on March 28, 2017. That email, regarding ATSC 3.0 chip development in India, was sent to my personal e-mail account and my Chief of Staff's official e-mail account. Consistent with FCC policy, my Chief of Staff forwarded this e-mail message to my official e-mail account one minute after it was received so that it would be made part of the Commission's records. I am providing this e-mail and the forwarded e-mail along with this letter.

3. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using social media messaging services or other messaging applications, such as, but not limited to, Facebook messenger? If so, please provide this correspondence.

Response: I have surveyed my staff, and we have not located any such correspondence.

4. Please provide a copy of every FOIA request, both completed and pending, that relate specifically to Sinclair.

Attached is a chart that lists each FOIA request related specifically to Sinclair filed between June 2016 and the date of your letter, the person or entity that requested it, the submitted date and status.

Sinclair-Tribune Proposed Merger:

1. When did you or your staff become aware of a possible transaction between Sinclair and Tribune?

Response: Although rumors of a potential transaction between Sinclair and Tribune surfaced in the press as early as March 2017, the Media Bureau staff, my staff, and I became aware of the specific pending transaction in May 2017, first from news outlets and then from the parties. *The New York Times* reported a possible deal on May 7, 2017, and on May 8, 2017, counsel for Sinclair called my office with the standard courtesy heads-up and sent the Media Bureau staff a press announcement. The applications were filed on June 26, 2017.

2. When did you direct the Media Bureau to begin drafting an order to reinstate the UHF discount?

Response: My office directed the Media Bureau to begin drafting an Order on Reconsideration to reinstate the UHF discount pending a holistic review of the national ownership cap in late January 2017, shortly after I was named Chairman of the Commission. This direction was consistent with my September 2016 dissent from the Report and Order that eliminated the discount without also analyzing the national ownership cap—a decision that was arbitrary and capricious. That direction was also consistent with the position that I took in 2013 when the Commission considered a Notice of Proposed Rulemaking regarding the UHF discount. And

that direction was reflected in the Commission's adoption on December 14 of a Notice of Proposed Rulemaking seeking public input on the scope of the Commission's authority both to adjust the cap and eliminate the UHF discount.

3. When did the Media Bureau begin to draft the September 14 Information Request letter to the applicants?

Response: The staff began considering issuing an information request within a couple of days after the applications were filed in late June. As part of the review process for any assignment of license or transfer of control application, the Media Bureau staff reviews the application and begins to determine what, if any, additional information will be needed in order to rule on the application. That review marks the beginning of the process by which the staff determines whether to request additional information from applicants.

4. Will the Media Bureau seek the additional information requested by interested parties in the July 12, 2017 Motion for Additional Information and Documents and Extension of Time?

Response: The Media Bureau issued an extensive Information Request on September 14, 2017. Some of the information requested was also the same as information sought by interested parties in their July 12, 2017 Motion. In response to the Bureau's September 14 Information Request, Sinclair provided more than 400 pages of documents on October 5, 2017. Staff is reviewing this response and will determine whether additional information is needed. In addition, the Media Bureau issued a Public Notice on October 18, 2017 inviting additional comments on this response. Such comments were due on or before November 2, 2017. Staff is reviewing the additional comments as well to determine whether additional information is needed from the applicants.

5. Will the Media Bureau pause the informal 180-day clock, as it has done in previous merger reviews, [footnote omitted] once the applicants respond to the information request in order for interested parties to have time to review and respond to the new information?

Response: On October 18, 2017, the Media Bureau released a Public Notice that stopped the clock for 15 days, until November 2, and stated that interested parties could submit additional comments in the proceeding to respond to the applicants' October 5 filing. *See Media Bureau Seeks Comment on Additional Submission in the Proceeding for Transfer of Control of Tribune Media Company to Sinclair Broadcast Group, Inc. and Pauses Informal 180-Day Transaction Shot Clock*, Public Notice, DA 17-1026 (MB Oct. 18, 2017).

Processing Guidance on License Transfer Applications:

1. Will you start a process for the full Commission's consideration on how the Media Bureau should review license transfer applications with sharing agreements or financial agreements?

Specifically, what is your plan to ensure that the Media Bureau has specific procedures to fully evaluate the impact of such transactions on the local markets and consumers? If you do not plan to put these specific procedures in place, please explain your reasons for not doing so.

Response: The Commission has rules and processes in place to ensure that proposed transactions, including those involving sharing or financial agreements, are thoroughly analyzed. I do not intend at this time to create a new process for review of such transactions. The Media Bureau has extensive experience in analyzing transactions involving sharing agreements and financial agreements.

Other Potential Proceedings:

1. Please provide a specific time frame for the Commission's consideration of revisions to the current TV Joint Sales Agreement attribution rule.

Response: The Commission voted on that issue at our November 16 meeting.

2. Please provide a specific time frame for the Commission's consideration of revisions to the current local TV ownership ("duopoly") rule.

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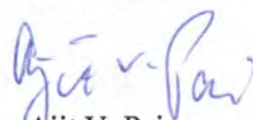
3. Please provide a specific time frame for the Commission's consideration of revisions to the current national TV ownership cap.

Response: As mentioned above, the Commission adopted a Notice of Proposed Rulemaking at our December 14 meeting to launch an examination of the current national television ownership cap, including the UHF discount.

4. Please provide a specific time frame for the Commission to start the next Quadrennial Review of Broadcast Ownership rules.

Response: Pursuant to Section 202(h) of the Telecommunications Act of 1996, as amended, the Commission must initiate a review of its broadcast ownership rules every four years. The last review was initiated in 2014 and consolidated into the ongoing 2010 review by my predecessor. Accordingly, the Commission will initiate the next review in 2018, consistent with its statutory obligation.

Sincerely,


Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

December 21, 2017

The Honorable Mike Doyle
Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Doyle:

Thank you for your letter dated September 29, 2017. As I explained in my September 8 response to your previous letter, since joining the Federal Communications Commission in 2012, my actions to promote a vibrant and free over-the-air broadcast service have been motivated by my belief that a strong over-the-air broadcast service advances the public interest, not by a desire to help any particular company.

I provide below specific responses to your additional questions. Particularly, with respect to the UHF discount, the responses below make clear that the Commission's decision this year to reverse the prior Commission's party-line decision and reinstate the UHF discount pending a holistic review of the national ownership cap was consistent with my prior actions and statements on this issue dating back four years and was made well before I was aware of the pending transaction between Sinclair and Tribune.

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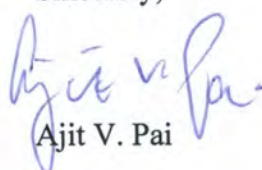
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4. Please provide a specific time frame for the Commission to start the next Quadrennial Review of Broadcast Ownership rules.

Response: Pursuant to Section 202(h) of the Telecommunications Act of 1996, as amended, the Commission must initiate a review of its broadcast ownership rules every four years. The last review was initiated in 2014 and consolidated into the ongoing 2010 review by my predecessor. Accordingly, the Commission will initiate the next review in 2018, consistent with its statutory obligation.

Sincerely,


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FEDERAL COMMUNICATIONS COMMISSION
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OFFICE OF
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December 21, 2017

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Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
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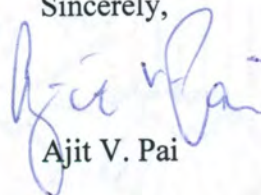
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Sincerely,

A handwritten signature in blue ink, appearing to read "Ajit V. Pai", is written over the printed name.

Ajit V. Pai